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185 South State Street, Suite 1300
Salt Lake City, Utah 84111
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Attorneys for Defendant Life
Insurance Company of North America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DARLA J. VAUGHAN,

Plaintiff,

vs.

L-3 COMMUNICATIONS
CORPORATION, L-3
COMMUNICATIONS LONG TERM
DISABILITY PLAN, and LIFE
INSURANCE COMPANY OF NORTH
AMERICA,

Defendants.

**ORDER OF DISMISSAL
WITH PREJUDICE**

Case No. 1:05cv00162 PGC

Judge Paul G. Cassell

Based upon the Stipulated Motion for Dismissal with Prejudice, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action and
plaintiff's Complaint (and each and every cause of action contained therein) in this action are
dismissed with prejudice, each party to bear its/her own attorneys' fees and costs.

The Clerk's Office is directed to Close this case.

DATED this 11th day of August, 2006.

BY THE COURT:



The Honorable Paul G. Cassell
U.S. District Court Judge

APPROVED AS TO FORM AND CONTENT:

BRIAN S. KING, ATTORNEY AT LAW

By: /s/ Brian S. King

Brian S. King
Nicole T. Durrant
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** was served via electronic service on the following on the 11th day of August, 2006:

Brian S. King
Nicole T. Durrant
Attorneys at Law
336 South 300 East, Suite 200
Salt Lake City, Utah 84111

/s/ Bentley J. Tolk

STEVEN B. KILLPACK, Federal Defender (#1808)
ROBERT K. HUNT, Assistant Federal Defender (#5722)
Utah Federal Defender Office
Attorney for Defendant
46 West 300 South, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010
Facsimile: (801) 524-4060

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS ENRIQUE DIAZ-PORTILLO,

Defendant.

**ORDER TO CONTINUE CHANGE OF
PLEA HEARING**

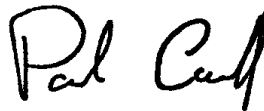
Case No. 1:06CR43 PGC

Based on the motion filed by the defendant and good cause appearing;

IT IS HEREBY ORDERED that the Change of Plea hearing for August 11, 2006, is hereby
continued until August 25, 2006 at the hour of 11:30 a.m.

DATED this 11th day of August, 2006.

BY THE COURT:



HONORABLE PAUL G. CASSELL
United States District Court Judge

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANGEL CAMACHO-SAGASTE,

Defendant.

: 1:06-CR-0054PGC

: ~~1:06-CR-0054PGC~~ FINDINGS AND ORDER

: Judge Paul G. Cassell

:

RECEIVED

AUG 10 2006

OFFICE OF
JUDGE PAUL G. CASSELL

On or about July 24, 2006, defendant filed a motion to extend the motion cut-off date based on failure of the government to provide certain unredacted police reports. On July 25, 2006, the United States responded, *ex parte*, and requested that the Court conduct an *in camera* hearing regarding the redacted police reports.

The United States appeared in chambers on August 9, 2006; the matter was taken down by a court reporter in a sealed transcript. Following review by the Court of the unredacted report at issue as well as the redacted version, the Court hereby finds,

THAT the government has established good cause at this time for the redactions in the report at issue;

THAT of redactions, which involve statements by the defendant, do not implicate the pretrial issues raised by the defendant in his motion; and

THAT the unredacted report should be turned over to the defense if the government intends to use the statements therein at trial.

Based on the foregoing, and for good cause appearing,

IT IS HEREBY ORDERED that if the government intends to use the statements contained in the redacted report at trial, the government shall provide the unredacted report to the defendant in a timely manner, giving the defendant ample opportunity to raise any issues regarding those statements with the Court prior to trial.

IT IS SO ORDERED.

DATED this 14th day of August, 2006.



PAUL G. CASSELL
U.S. District Court Judge

UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

Northern

District of

UTAH

AUG 11 2006

Darla K. Burrell

Plaintiff

V.

Utah State Workforce Services

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 08/11/2006 @ 16:00:18

CASE NUMBER: 1:06CV00091 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 10th day of August, 2006.

Signature of Judge

Magistrate Judge Paul M. Warner

Name and Title of Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

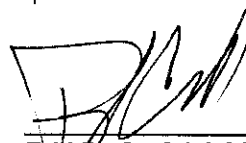
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No.: 2:01cr00365 PGC
	:	Associated with: 2:06cr00468 DB
Plaintiff,	:	
vs.	:	ORDER FOR MOTION TO RE-
	:	ASSIGN CASE
MIGUEL ANGEL SANCHEZ-JAIMES,	:	
Defendant.	:	JUDGE PAUL G. CASSELL

Based on the United States' motion, and good cause appearing, this Court
orders the clerk's office to re-assign Case No. 2:06cr00468 DB to Judge Cassell.

IT IS SO ORDERED.

Dated this 11th day of August, 2006.



PAUL G. CASSELL
District Court Judge

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ORDER TO WITHDRAW AS
-vs-	:	ATTORNEY FOR THE DEFENDANT
	:	AND APPOINT NEW COUNSEL
MARTIN SANCHEZ-JAIMES,	:	Case No. 2:01CR-365PGC
Defendant.	:	

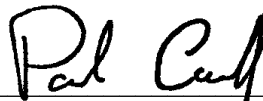
Based on motion of the Defendant and good cause shown;

It is hereby ORDERED that Joshua Bowland, Attorney at Law, is appointed to represent Defendant.

It is further ORDERED that Tiffany L. Johnson, Attorney at the Utah Federal Defender's Office, is hereby granted leave to withdraw as counsel of record for Defendant, Martin Sanchez-Jaimes, in the above-entitled case.

DATED this 11th day of August, 2006.

BY THE COURT:



HONORABLE PAUL G. CASSELL
United States District Court Judge

United States District Court
for the District of Utah

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

Petition and Order for Summons for Offender Under Supervision

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY: ~~7:02-GR-00444-001-PGC~~

Name of Offender: **Devin G. Hull**

Docket Number: **7:02-GR-00444-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell, United States District Judge**

Date of Original Sentence: **July 23, 2003**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **37 months BOP custody and 36 months supervised release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 14, 2005**

PETITIONING THE COURT

☒ To issue a summons

Layton, UT 84040

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: The defendant failed to submit to drug and/or alcohol testing on July 3, 6, 15, 28, and August 4, 2006, as directed by the U.S. Probation Office.

I declare under penalty of perjury that the foregoing is true and correct.

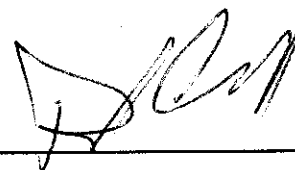
 FOR

Eric Anderson, U.S. Probation Officer

Date: August 9, 2006

THE COURT ORDERS:

- ☒ The issuance of a summons
- ☐ The issuance of a warrant
- ☐ No action
- ☐ Other



Honorable Paul G. Cassell
United States District Judge

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AUG 10 2006

OFFICE OF
JUDGE PAUL G. CASSELL


Date: 8/11/06

Attorneys for Utah County Defendants

)	
AARON RAISER,)	ORDER REQUIRING PLAINTIFF TO
)	SERVE HIS AMENDED
Plaintiff,)	COMPLAINT
)	
v.)	Case No. 2:02 CV 1209 PGC
)	
UTAH COUNTY, <i>et al.</i> ,)	Honorable Paul G. Cassell
)	Magistrate Paul M. Warner
Defendants.)	
)	

DATED this 14th day of August, 2006.

2006.



Paul M. Warner
United States Magistrate Judge

United States Probation Office

for the District of Utah **AUG 11 2006**

Report on Offender Under Supervision

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

RECEIVED CLERK

AUG 11 2006

Name of Offender: **PAUL BRADLEY VANLEER**

Docket Number: **2:03-cr-00130-CBS**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell, United States District Judge**

Date of Original Sentence: **June 26, 2003**

Original Offense: **Possession of a Firearm by a Convicted Felon**

Original Sentence: **Commitment to Bureau of Prisons 18 months, 36 months supervised release**

Date of Re-sentencing on Violation: **October 21, 2004**

Violation Sentence: **Bureau of Prisons custody 24 months, 12 months supervised release**

RECEIVED

Type of Supervision: **Supervised Release**

Supervision Began: **June 20, 2006**

AUG 10 2006

SUPERVISION SUMMARY

OFFICE OF

JUDGE PAUL G. CASSELL

On June 26, 2003, the defendant appeared before this Court, with counsel, for sentencing. The defendant was sentenced to an eighteen (18) month term of commitment with the U.S. Bureau of Prisons (BOP), to be followed by a thirty-six (36) month term of supervised release (TSR). The defendant's TSR commenced on July 2, 2004, following his release from BOP custody.

On or about September 22, 2004, United States Probation Officer (USPO) Meriska Holt, after several attempts to gain the compliance of the defendant, submitted a petition for warrant alleging violations of the defendant's TSR. A warrant was issued on September 27, 2004, and the defendant's TSR was tolled.

On or about September 30, 2004, following the defendant's apprehension, the defendant appeared before the Honorable Samuel Alba, Chief U.S. Magistrate Judge. The defendant was present with counsel. The defendant waived his Probable Cause Hearing, and was remanded to the custody of the United States Marshals Service (USMS) pending a hearing before this Court.

On October 21, 2004, the defendant appeared before this Court, with counsel, for a violation and sentencing hearing. The defendant admitted to all nine (9) allegations as outlined in the petition. The defendant was subsequently sentenced to a twenty-four (24) month term of commitment with the BOP, to be followed by a twelve (12) month TSR. The defendant's TSR commenced on June 20, 2006, following his release from BOP custody. The defendant participated and completed the Residential Drug Abuse Program (RDAP) while in BOP custody, prior to his most recent TSR commencing. The defendant's supervised release case was transferred from USPO Holt to this officer on July 21, 2006.

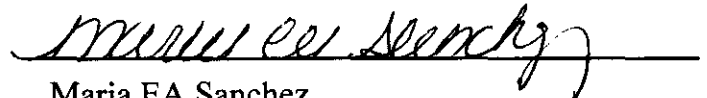
Since the defendant's most recent TSR commenced on June 20, 2006, he has failed to attend substance abuse treatment as directed, failed to pay financial obligations as directed, failed to report as directed, failed to submit to random urinalysis testing as directed, has been named as a possible suspect in a current investigation by the Centerville Police Department, and has submitted at least one (1) urine sample that tested positive for cocaine.

Due to the fact that the defendant has failed to comply with the terms of supervised release as ordered by this Court on October 21, 2004, and that the statutory maximum term of incarceration on revocation has been exhausted, this officer staffed the defendant's case on August 7, 2006, with Supervising USPO Dave Christensen, Special Assistant United States Attorney (AUSA) Wade Farraway, and this Court.

It is therefore respectfully recommended that the defendant's term of supervised release be terminated unsuccessfully, and interest in the case be closed.

If the Court desires more information or another course of action, please contact me at (801) 535-2732.

I declare under penalty of perjury that the foregoing is true and correct

A handwritten signature in cursive script, appearing to read "Maria EA Sanchez", is written over a horizontal line.

Maria EA Sanchez
U.S. Probation Officer
Date: August 9, 2006

**Report and Order Terminating Supervised Release
Prior to Original Expiration Date**

UNITED STATES DISTRICT COURT

for the

DISTRICT OF UTAH

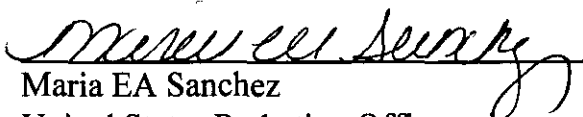
UNITED STATES OF AMERICA

v. Criminal No. 2:03-CR-00137-001 PGC

PAUL BRADLEY VANLEER


On October 21, 2004 the above named was placed on Supervised Release for a period of one (1) year. The defendant has failed complied with the rules and regulations of Supervised Release and no longer amenable to supervision efforts. It is accordingly recommended that the defendant be discharged from supervision unsuccessfully.

Respectfully submitted,


Maria EA Sanchez
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision unsuccessfully and that the proceedings in the case be terminated.

Dated this 11th day of August, 2006.


Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

RUDY SANCHEZ MORALES

Defendant.

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ORDER CLOSING CASE

Case No. 2:03-CR-970 DAK


It appearing from the criminal docket sheet that there has been no activity in this case since December 12, 2003, and it being represented that the defendant's whereabouts are unknown,

THEREFORE, good cause appearing,

IT IS HEREBY ORDERED that the case is closed.

Dated this 11th day of August, 2006.

BY THE COURT:



Dale A. Kimball
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

**KLEIN-BECKER usa, LLC, a Utah
limited liability company,**

Plaintiff,

vs.

**ALLERGAN, INC., a Delaware
Corporation, and MEDIACOM
WORLDWIDE, INC., a Delaware
Corporation,**

Defendants.

**ALLERGAN, INC., a Delaware
Corporation,**

Counterclaimant,

vs.

**KLEIN-BECKER usa, LLC, a Utah
limited liability company,**

Counter-Defendant.

**ORDER DENYING MOTION FOR
LEAVE TO FILE MEMORANDUM IN
OPPOSITION**

Case No. 2:03CV514

Chief Judge Dee Benson

Magistrate Judge Paul M. Warner

Before the court is Plaintiff Klein-Becker usa, LLC's ("Klein-Becker") Motion for Leave to File Out-of-Time Memorandum in Opposition to Allergan, Inc.'s ("Allergan") Motion for Rule 37 Relief that was filed on June 5, 2006. [Docket no. 588.] Pursuant to Federal Rule of Civil Procedure 6(a) and Utah local rule 7-1(b)(3), Klein-Becker's opposition memorandum was due June 23, 2006. Klein-Becker asserts that it "inadvertently failed to file an opposition" and now seeks leave from the court to do so. Because Klein-Becker's failure to file its opposition memorandum was not "the result of excusable neglect," Fed. R. Civ. P. 6(b), IT IS HEREBY ORDERED that Allergan's motion [docket no. 654] is DENIED. Accordingly, the Clerk of Court is ORDERED not to file Klein-

Becker's Memorandum in Opposition to Allergan's Motion for Rule 37 Relief. [See docket no. 655].

DATED this 14th day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner". The signature is written in black ink and is positioned above a horizontal line.

Paul M. Warner
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSE ALVAREZ-PASILLAS,
Defendant.

ORDER DENYING MOTION
MOTION TO ALTER AND/OR
AMEND JUDGMENT

Case No. 2:04-CR-00096 PGC

Defendant Jose Alvarez-Pasillas has filed a motion to alter and/or amend the court's previous judgment denying Mr. Alvarez-Pasillas' motion for production of trial or sentencing transcripts. In his previous motions [#114, 115], Mr. Alvarez-Pasillas requested pre-trial hearing, trial and sentencing transcripts because he "intend[ed] to file a petition for certiorari and/or petition for post conviction relief." On January 13, 2006, the Tenth Circuit issued its ruling on defendant Jose Alvarez-Pasillas' appeal. The court noted that according to the Supreme Court Rules, "a petition for writ of certiorari to review a judgment in any case, civil or criminal entered by a . . . United States court of appeals . . . is timely when it is filed with the

Clerk of this Court within 90 days after entry of judgment.”¹ Additionally, the court noted that the “Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time.”² Therefore, the court found that Mr. Alvarez-Pasillas’ petition for certiorari before the Supreme Court was jurisdictionally out of time as of April 14, 2006. Because he did not file his request for transcripts until May 22, 2006, and because he failed to demonstrate any reason for failing to follow the Supreme Court’s deadlines, the court denied his request.

Additionally, the court noted that Mr. Alvarez-Pasillas had not filed any motion for post-conviction relief. Therefore, the court held that he failed to show his need for these transcripts to supplement his any post-conviction relief memorandum to this court.

Mr. Alvarez-Pasillas now requests the court to amend its judgment because he has the assistance of another inmate who is aiding his preparation for “either a writ of certiorari and/or petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255.” Additionally, Mr. Alvarez-Pasillas notes that he “is unable to explain anything about his case due to his lack of understanding of the [E]nglish language as well as his lack of knowledge of criminal law.”

Again, the court notes that Mr. Alvarez-Pasillas’ petition for writ of certiorari is wholly out of time and finds that he has not demonstrated any reason why the Supreme Court would accept a late petition. And, as the court noted before, Mr. Alvarez-Pasillas has not, as of yet, filed any post-conviction relief motions with the court that would warrant his need for the court to produce these transcripts. Therefore, the court DENIES Mr. Alvarez-Pasillas’ motion to

¹ Sup. Ct. R. 13(1).

² Sup Ct. R. 13(2).

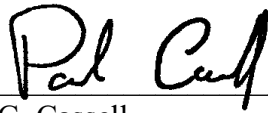
amend and/or alter its previous judgment [#117].

The court has, however, sent a letter to Mr. Alvarez-Pasillas' counsel of record for both the trial and the appeal. That letter requests his counsel to take appropriate action, which may include photocopying and sending Mr. Alvarez-Pasillas his requested transcripts. The court has also sent a copy of that letter to Mr. Alvarez-Pasillas as well. This case is to remain closed.

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

ARTURO GOMEZ-AVILA

Defendant.

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ORDER CLOSING CASE

Case No. 2:04-CR-119 DAK

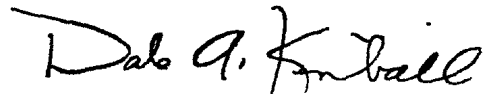
It appearing from the criminal docket sheet that there has been no activity in this case since March 4, 2004, and it being represented that the defendant's whereabouts are unknown,

THEREFORE, good cause appearing,

IT IS HEREBY ORDERED that the case is closed.

Dated this 11th day of August, 2006.

BY THE COURT:



Dale A. Kimball
U. S. District Judg

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

PANDA EXPRESS, INC., a California Corp.

Plaintiff,

vs.

EXCEL CONSTURCTION, L.C., a Utah LLC,

Defendant.

Case No. 2:04 cv 579 TS

ORDER GRANTING MOTION TO
ALLOW SUBSTITUTION

Judge Ted Stewart

Magistrate Judge Brooke C. Wells

In 1978 the famed Farmers Almanac stated “To err is human, but to really foul things up requires a computer.”¹ Such is the circumstance in this case. Defendant, Excel Construction electronically filed a Motion for Attorney fees on July 3, 2006.² Accompanying its motion was a memorandum in support along with six attachments. Unbeknown to Excel was the fact that it somehow filed one of the attachments twice when it was separated for electronic filing. So, instead of filing the complete 51 pages of attorney documented hours, only the first 30 pages were filed twice.³ Thus, Defendant’s counsel, Robert R. Wallace, had only 3.9 hours documented instead of the 133.9 hours argued for in Excel’s memoranda. Excel did not discover this problem until after Plaintiff, Panda Express, filed a Motion to Strike Excel’s Reply

¹ Anonymous, *Farmers Almanac*, Capsules of Wisdom 1978.

² Docket no. 74.

³ See Mem. in Supp. ex. C.

memoranda which documented the 133.9 hours instead of the 3.9 found in the initial attachments.⁴ This court granted Panda's motion in part permitting Panda to file a sur-response by August 18, 2006.⁵

Notably, Excel suggests the following in its motion to correct the error.⁶

Further, counsel for Excel, in order to attempt to be fair with counsel for Panda, requests this Court to allow Panda to respond in any appropriate fashion to full exhibit C, and suggests that the Court may possibly want to subtract from the request of Excel Construction for the award of attorney's fees in this case, a reasonable attorney fee for the additional work to Panda's counsel caused by this error.⁷

The court commends Excel's counsel for admitting that it created the problem before the court.⁸

Based on the error that is evident in the record, and Excel's memoranda the court GRANTS Excel's Motion to Allow Substitution.⁹

In accord with Excel's suggestion the court further ORDERS that Panda may file a response addressing the new exhibit and any other relevant items by August 23, 2006.¹⁰ In its response the court would like Panda to address the possibility of decreasing the fees awarded to Excel by a reasonable amount incurred by Panda because of the error. An affidavit listing the time and fees expended due to the error is to be filed with Panda's response. Following Panda's

⁴ Docket no. 81.

⁵ See Order dated 8/9/2006.

⁶ Docket no. 83.

⁷ Mem. in Supp of Mtn. to Allow Substitution p. 5.

⁸ See *id.*

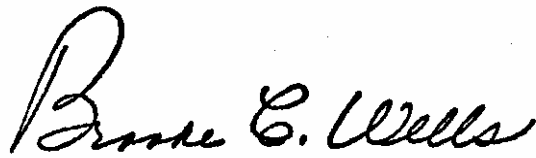
⁹ Docket no. 83.

¹⁰ The new date and reply memoranda replaces the date and sur-reply previously ordered by the court.

response, Excel may file a reply by August 28, 2006. On September 1, 2006 the court will hear oral argument on the motion for attorney fees.

It is so ORDERED.

DATED this 11th day of August, 2006.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large initial "B".

Brooke C. Wells
United States Magistrate Judge

UNITED STATES DISTRICT COURT

Central Division

District of

Utah

UNITED STATES OF AMERICA

V.

Sherry Ann Canales

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 205CR000028-008

USM Number: 12362-081

Gregory Stevens

Defendant's Attorney

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 10 2006

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 2 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846	Conspiracy to Distribute Heroin and Cocaine		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 3 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/8/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

8/8/2006

Date

DEFENDANT: Sherry Ann Canales
CASE NUMBER: DUTX 205CR000028-008

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

36 months

☒ The court makes the following recommendations to the Bureau of Prisons:

1. Participation in RDAP Program.
2. Participation in education classes in an attempt to complete her high school education.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Sherry Ann Canales

CASE NUMBER: DUTX 205CR000028-008

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Sherry Ann Canales
CASE NUMBER: DUTX 205CR000028-008

ADDITIONAL SUPERVISED RELEASE TERMS

1) Defendant shall resume child support payments as established by the Office of Recovery Services. Confirmation payments will be provided to USPO.

2) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

3) The defendant shall participate in a mental health treatment program under a copayment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the chief item of order, during the course of treatment or medication.

DEFENDANT: Sherry Ann Canales
CASE NUMBER: DUTX 205CR000028-008

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Sherry Ann Canales
CASE NUMBER: DUTX 205CR000028-008

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES OF AMERICA	:	
	:	
	:	ORDER CLOSING CASE
Plaintiff,	:	
vs.	:	Case No. 2:05-CR-208 DAK
	:	
EDEL DOMINGUEZ and	:	
EVER DOMINGUEZ	:	
	:	
Defendants.	:	
	:	

Dale A. Kimball
U. S. District Judge

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. J. Thomas Greene

COURT REPORTER: Kelly Hicken

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: Grant Anderson

CASE NO. 5-CR-637 JTG & 6-CR-414 JTG

USA v. Said Barron-Maciel

Approved By: 

APPEARANCE OF COUNSEL

Pla Brett R. Parkinson, AUSA
Dft Carlos A. Garcia, FPD
USPO Maria Sanchez

DATE: August 9, 2006, 11:06 AM

MATTER SET: Status Conference/Preliminary Revocation Hearing/Change of Plea

(38 mins)

DOCKET ENTRY:

Dft pres & in custody. Interpreter previously sworn. Mr. Garcia asserts his client speaks & understands the English language. Mr. Grant to be on standby. Dft has BICE detainer.

● **5-CR-637 JTG (formerly DKW)**

Preliminary Revocation Hearing

Dft admits to allegation 1 of the supervised release violation petition. Crt finds violation & revokes supervised release. U.S. Prob to update presentence report.

● **6-CR-414 JTG**

Change of Plea

Dft sworn & testifies. Govt informs Crt that dft on "fast track program" as an illegal reentry case. Rights, max/min penalties explained. Stmt in Adv of POG signed & filed with the Crt. Ctn 1 of the Indictment read. Dft pleads guilty to Ctn 1 of the Indictment. Crt finds that there is a factual basis for the charge & that the plea is freely & voluntarily given. Crt adjudges the dft guilty & orders presentence report. Crt schedules:

- Sentencing set 10/25/2006, at 2:30 PM, on both cases.

Dft remanded to custody of USMS.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LOUIS JOSEPH MALEK,

Plaintiff,

vs.

MARY ANN REDING, et al.,

Defendants.

ORDER DENYING MOTION TO
STAY

Case No. 2:05-CV-322 PGC

Plaintiff Louis Joseph Malek filed a motion to stay [#27] in the above-titled case almost a week after the Tenth Circuit ruled on his case. He requests a stay of this action because he anticipates a pending decision in his habeas action proceeding before the District of Utah.¹ Mr. Malek argues that in that action he questions the validity of the only state criminal judgment currently authorizing his detention, and that a ruling on his companion habeas action will shed light on his currently pending case.

According to the court's order on August 9, 2006, the court denied Mr. Malek's *in forma pauperis* application [#28]. Mr. Malek has thirty days from August 9, 2006, to pay his full \$250 filing fee or his case will be dismissed without further notice. Mr. Malek has shown no

¹ *Malek v. Friel, et al.*, Case No. 2:04-CV-1062 TS.

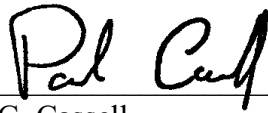
appropriate reason why the court should stay this order in light of his pending habeas action.

And the court declines to grant Mr. Malek's motion to stay because he still has not yet paid in full his \$250 filing fee. If Mr. Malek pays his fee in full, he is welcome to refile his motion to stay this case pending resolution of his habeas action. The court DENIES Mr. Malek's motion to stay without prejudice [#27].

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

QWEST CORPORATION,

Plaintiff,

vs.

UTAH TELECOMMUNICATIONS OPEN
INFRASTRUCTURE AGENCY, an
interlocal cooperative governmental agency;
the CITY OF RIVERTON, a Utah municipal
corporation; and TETRA TECH
CONSTRUCTION SERVICES INC., a
Colorado corporation,

Defendants.

NUNC PRO TUNC ORDER REGARDING
REGARDING REFERRAL TO
MAGISTRATE JUDGE

Case No. 2:05-CV-00471 PGC

This order is to correct the entry of an order the court previously made but which does not reflect what was actually done. On September 12, 2005, the court ordered the parties to contact Magistrate Judge Alba by September 15, 2006, to conduct a settlement conference.¹ Then, on July 10, 2006, the court ordered the parties to contact Magistrate Judge Nuffer to arrange a

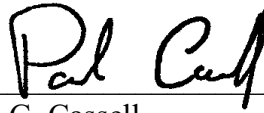
¹See Docket No. 13.

mediation schedule.² The parties contacted Judge Nuffer and held a settlement conference on August 9, 2006.³ The record shall be amended to reflect what actually occurred.

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

²See Docket Nos. 116, 117.

³See Docket No. 129.

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY ~~DEPUTY CLERK~~

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL MELTON, personally, and as the
parent and guardian of ASHLEY ROSALEZ,
STEPHANIE MELTON, and JUSTIN
MELTON, minor children,

Plaintiffs,

vs.

ENCANA OIL & GAS (USA) INC. and
TOM BROWN, INC.,

Defendants.

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
AMEND SCHEDULING ORDER

Case No. 2:05-CV-842 PGC

Plaintiff Michael Melton motions the court for an amended scheduling order regarding the designation deadlines for liability and damage experts [#25]. He requests the amendment of designation deadlines for liability experts to September 15, 2006, and for damage experts to September 27, 2006. Defendant Encana Oil has stipulated to certain changes in the scheduling order, including:

1. Plaintiffs' Rule 26(a)(2) damage expert reports to be filed by September 27, 2006;
2. Defendants' Rule 26(a)(2) damage expert reports to be filed by October 25, 2006;
3. Counter reports on damage experts by Plaintiffs to be filed by November 22, 2006;

4. Counter reports on damage experts by Defendants to be filed by December 20, 2006;

5. And expert discovery to be completed by December 14, 2006.

Mr. Melton also requests the court to extend his deadline for designating liability experts by 30 days to September 15, 2006. Encana Oil argues that extending the deadline for filing liability expert reports will materially reduce the amount of time to conduct discovery. Encana Oil also argues that it has already stipulated to one change in the scheduling order, on June 9, 2006, and that Mr. Melton has not demonstrated any changed circumstances that warrants moving the deadline for filing liability expert reports. Indeed, the court notes that the parties stipulated to the original scheduling report on December 21, 2005, and also notes that Mr. Melton's reports from experts and counter reports were originally due before the completion of fact discovery.

Mr. Melton argues that he will be seriously prejudiced because certain key witnesses still must be deposed. He argues that by not having yet deposed certain key witnesses, his liability expert witnesses will not be fully informed in order to write complete reports on this case. Encana Oil complains, however, that Mr. Melton has provided new requests for production of documents, on July 28, 2006, which had not been included in the previous request for production. Furthermore, on August 1, 2006, it appears that Mr. Melton requested further depositions of certain key witnesses that he now complains must be deposed prior to designating liability experts and submitting those liability reports.

The court notes that the parties stipulated to its first scheduling order almost eight months ago, on December 21, 2005 [#9]. The parties then stipulated to a second scheduling order more

than two months ago, on June 9, 2006 [#23]. Enough notice and time has been provided to all of the counsel involved in order to vigorously prosecute or defend this case. The court understands Mr. Melton's urgency by seeking an expedited decision, but it also appears that a full one month extension would not be appropriate.

Accordingly, the court GRANTS IN PART and DENIES IN PART Mr. Melton's motion to amend the scheduling order [#25]. As stipulated earlier:

1. Plaintiffs' Rule 26(a)(2) damage expert reports to be filed by September 27, 2006;
2. Defendants' Rule 26(a)(2) damage expert reports to be filed by October 25, 2006;
3. Counter reports on damage experts by plaintiffs to be filed by November 22, 2006;
4. Counter reports on damage experts by defendants to be filed by December 20, 2006;
5. And expert discovery to be completed by December 14, 2006.

And now, the court rules:

6. Plaintiffs' Rule 26(a)(2) liability expert reports to be filed by August 25, 2006;
7. Defendants' Rule 26(a)(2) liability expert reports to be filed by September 22, 2006;
8. Counter reports on liability experts by plaintiffs to be filed by October 13, 2006;
9. Counter reports on liability experts by defendants to be filed by November 3, 2006.
10. All other deadlines, including the fact discovery deadline (November 15, 2006), the dispositive motion deadline (December 14, 2006), the pre-trial conference (March 6, 2007) and the trial date (March 19, 2007) are to stay the same.

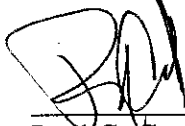
Setting these deadlines should provide Encana Oil enough time to research and file its dispositive motions without prejudice to its case, but shall also provide a slight grace period to

Mr. Melton to complete his pertinent discovery and file his liability expert reports. Given that this is the second motion to amend the scheduling order, the court notes to both parties that it will not entertain any further motions to amend any dates in the scheduling order absent extraordinarily good cause shown.

SO ORDERED.

DATED this 14 day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. G. Cassell', written over a horizontal line.

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BARBARA J. PUMPHREY,
Plaintiff,

vs.

LIFESCAN, INC.,
Defendant.

ORDER TO DEFENDANT TO ANSWER
PLAINTIFF'S COMPLAINT

Case No. 2:05-CV-00851 PGC

Based upon the plaintiff's filing of proof that she served process on Lifescan, Inc., on February 2, 2006, the court issued an Order to Show Cause to the defendant as to why it had not filed a timely answer. On August 7, 2006, the defendant, Lifescan, Inc., responded to the court's order with a Statement of Good Cause (#9) and a declaration from the security manager for Lifescan, Kevin Heinrich, explaining that Mr. Heinrich did not specifically remember having been served process in this matter.

Regardless of the exact date on which the defendant first became aware of this matter, Lifescan currently has notice of, and is fully aware of, Ms. Pumphrey's claims against it. The court, therefore, considers Lifescan to have been served process in this matter as of the date of this order. Based on this, the court orders Lifescan to file an answer to the plaintiff's complaint, or other appropriate motion, within twenty (20) days from the date of this order.

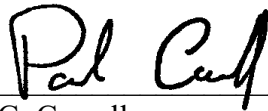
The clerk's office is directed to forward a copy of this order to Lifescan's agent at the following address:

Lifescan, Inc.
Kevin Heinrich
1000 Gibraltar Drive
Milpitas, CA 95035

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

RECEIVED CLERK

AUG 08 2006

U.S. DISTRICT COURT

Wendy J. Lems, #7409
LEMS LAW OFFICE, P.C.
7050 South Union Park Center, Suite 350
Salt Lake City, Utah 84047
Telephone: (801) 256-9500
Facsimile: (801) 255-2442
Email: wlems@networld.com
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

DENNIS McBRIDE,

Plaintiff,

vs.

GRANTSVILLE CITY, GRANTSVILLE CITY
POLICE DEPARTMENT, DAN JOHNSON, an
individual and chief of Grantsville City Police
Department, DAN CHAMBERLAIN, an
individual and Grantsville City police officer,
GEORGE HUBER, an individual and Grantsville
City police officer, DARRIN YATES, an
individual and Grantsville City police officer;
WESTGATE VISTA, L.C., a Utah limited liability
company, doing business as Westgate Mortgage;
DONNA McBRIDE, an individual and agent of
Westgate Vista; HAL BROSTROM, an individual
and agent of Westgate Vista; KEY CORP, an Ohio
corporation, doing business as KEY BANK;
SUSAN SAGERS, an individual and agent of Key
Bank; JOHN DOES I through X, as agents of Key
Bank; and John Does XI through XX, as agents of
Grantsville City and/or Grantsville City Police
Department.

Defendants.

**STIPULATED ORDER ON
MOTION FOR CONTINUANCE**

ORDER

Case No. 06-000700-365DB
Judge Dee Benson

The parties, by and through counsel, have stipulated to rescheduling the hearing on the
Motions to Dismiss as currently scheduled for August 22, 2006, at the hour 2:00 p.m. to a

mutually agreeable alternative date for 29, Sept, 2006 at the hour of 11:00 A.M.
a.m./p.m. to accommodate Plaintiff's counsel's request and due to Plaintiff's counsel's calendar
conflict with previously scheduled trial currently scheduled for August 22 through August 24,
2006, before the Third Judicial District Court in and for Salt Lake County, State of Utah.
Counsel for the parties respectfully request rescheduling of this matter to a later date and time
mutually agreeable to the Court and counsel.

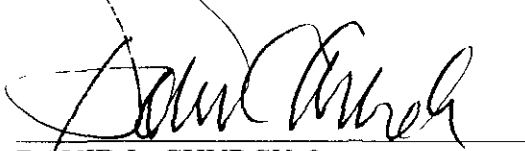
DATED THIS 10 day of ^{Aug}~~July~~, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style.

HONORABLE DEE BENSON
United States District Court Judge

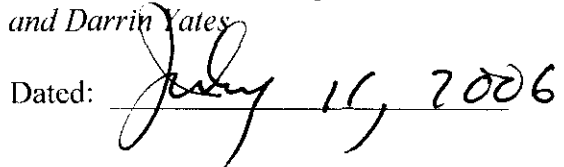
Approval to Form:




DAVID L. CHURCH &
DAVID R. BLAISDELL

*Attorneys for Defendants Grantsville City,
Grantsville Police Department, Dan Johnson,
Dan Chamberlain George Huber,
and Darrin Yates*


Dated:



Approval to Form:


MARY CORDON
Attorney for Defendants Donna
McBride and Westgate Vista, L.C.
(subject to input regarding new date)
Dated: 7-10-06

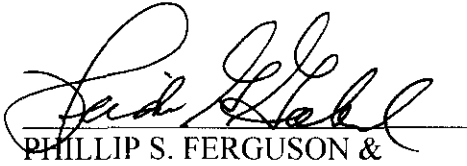
Approval to Form:



LARRY R. KELLER
Attorney for Defendant Hal Brostrom

Dated: 7/7/06

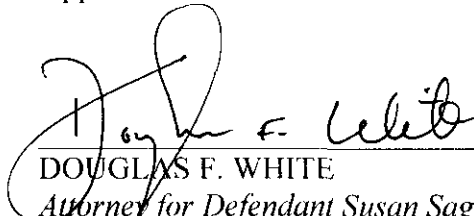
Approval to Form:

A handwritten signature in cursive script, appearing to read "Phillip S. Ferguson & Heidi G. Goebel", written over a horizontal line.

PHILLIP S. FERGUSON &
HEIDI G. GOEBEL
*Attorney for Defendant Key Corp,
dba Key Bank*

Dated: July 7, 2006

Approval to Form:


DOUGLAS F. WHITE
Attorney for Defendant Susan Sagers

Dated: 7-10-06

CERTIFICATE OF SERVICE

I certify that on this 3rd day of July, 2006, the forgoing document was delivered via Facsimile and United States Mail, postage prepaid, to the following:

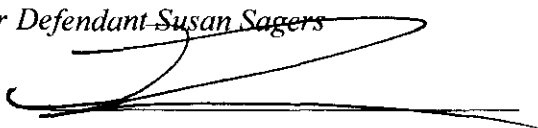
**DAVID L. CHURCH &
DAVID R. BLAISDELL**
BLAISDELL & CHURCH
5995 S REDWOOD RD
SALT LAKE CITY, UT 84123
*Attorneys for Defendants Grantsville City,
Grantsville Police Department, Dan Johnson, Dan
Chamberlain George Huber, and Darrin Yates*

MARY C. CORPORON
CORPORON WILLIAMS & BRADFORD PC
405 S MAIN ST STE 700
SALT LAKE CITY, UT 84111
*Attorney for Defendants Donna McBride and
Westgate Vista, L.C.*

LARRY R. KELLER
COHNE RAPPAPORT & SEGAL
PO BOX 11008
SALT LAKE CITY, UT 84147-0008
Attorney for Defendant Hal Brostrom

**PHILLIP S. FERGUSON &
HEIDI G. GOEBEL**
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
Attorney for Defendant Key Corp, dba Key Bank

DOUGLAS F. WHITE
3282 SUNSET HOLLOW DR
BOUNTIFUL, UT 84010-3213
Attorney for Defendant Susan Sagers



UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

UTAH

UNITED STATES OF AMERICA
V. JUDGMENT IN A CRIMINAL CASE
COURT, DISTRICT OF UTAH

AMENDED

Francisco Lopez-Vasquez

AUG 14 2006

Case Number: DUTX 206CR000295-001

MAFELUS B. ZIMMER, CLERK
BY DEPUTY CLERK

USM Number: 13595-081

Joshua Bowland

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/18/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U. S. District

Title of Judge

Date

8/10/06

DEFENDANT: Francisco Lopez-Vasquez
CASE NUMBER: DUTX 206CR000295-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Time-served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Francisco Lopez-Vasquez
CASE NUMBER: DUTX 206CR000295-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Francisco Lopez-Vasquez
CASE NUMBER: DUTX 206CR000295-001

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Francisco Lopez-Vasquez
CASE NUMBER: DUTX 206CR000295-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
--------	---------	---------	--

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Francisco Lopez-Vasquez
CASE NUMBER: DUTX 206CR000295-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

Central

District of

AUG 11 2006

Utah
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA

V.

CARLOS DAVID GUARNEROS-PINEDA

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000297-001

USM Number: 13597-081

Viviana Ramirez

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/11/2006

Date of Imposition of Judgment



Signature of Judge

Paul Cassell

Name of Judge

US District Judge

Title of Judge

8/11/06
Date

DEFENDANT: CARLOS DAVID GUARNEROS-PINEDA
CASE NUMBER: DUTX206CR000297-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

12 months + 1 day

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CARLOS DAVID GUARNEROS-PINEDA
CASE NUMBER: DUTX206CR000297-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CARLOS DAVID GUARNEROS-PINEDA
CASE NUMBER: DUTX206CR000297-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: CARLOS DAVID GUARNEROS-PINEDA

CASE NUMBER: DUTX206CR000297-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CARLOS DAVID GUARNEROS-PINEDA
CASE NUMBER: DUTX206CR000297-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
AUG 11 2006
MARKUS B. ZIMMER, CLERK
UTAH DEPUTY CLERK

UNITED STATES DISTRICT COURT

CENTRAL

District of

UNITED STATES OF AMERICA

V.

JOSE ALBERTO PEREZ-TREJO

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000346-0001

USM Number: 13646-081

Viviana Ramirez

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. 1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/7/2006

Date of Imposition of Judgment

Signature of Judge

Paul G. Cassell

Name of Judge

Federal District Judge

Title of Judge

Date

8/11/06

DEFENDANT: JOSE ALBERTO PEREZ-TREJO
CASE NUMBER: DUTX206CR000346-0001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Four months. Upon completion of this term of imprisonment, the defendant shall be remanded to the Bureau of Immigration and Custom Enforcement for deportation proceedings.

☒ The court makes the following recommendations to the Bureau of Prisons:

that defendant serve in a facility near Utah and that the defendant receive educational training, if possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE ALBERTO PEREZ-TREJO
CASE NUMBER: DUTX206CR000346-0001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Twelve (12) months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSE ALBERTO PEREZ-TREJO
CASE NUMBER: DUTX206CR000346-0001

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: JOSE ALBERTO PEREZ-TREJO

CASE NUMBER: DUTX206CR000346-0001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSE ALBERTO PEREZ-TREJO
CASE NUMBER: DUTX206CR000346-0001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

AUG 11 2006
BY MARKUS B. ZIMMER, CLERK
Utah DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Francisco Javier Aguirre-Gutierrez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000354-001

USM Number: 90241-008

Chelsea Koch

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/7/2006

Date of Imposition of Judgment



Signature of Judge

Paul Cassell

Name of Judge

US District Judge

Title of Judge

Date

8/11/06

DEFENDANT: Francisco Javier Aguirre-Gutierrez
CASE NUMBER: DUTX206CR000354-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

6 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility in Phoenix, AZ. to facilitate family visitation

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Francisco Javier Aguirre-Gutierrez

CASE NUMBER: DUTX206CR000354-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Francisco Javier Aguirre-Gutierrez
CASE NUMBER: DUTX206CR000354-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Francisco Javier Aguirre-Gutierrez
CASE NUMBER: DUTX206CR000354-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00
--------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Francisco Javier Aguirre-Gutierrez
CASE NUMBER: DUTX206CR000354-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

AUG 11 2006

CENTRAL

District of

MARKUS B. ZIMMER, CLERK
BY UTAH DEPUTY CLERK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

HECTOR ENRIQUE CASTRO-ESTRADA

Case Number: DUTX206CR000390-0001

USM Number: 13659-081

Jessica Stengel
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/11/2006

Date of Imposition of Judgment

Signature of Judge

Paul G. Cassell

Federal District Judge

Name of Judge

Title of Judge

Date

8/11/06

DEFENDANT: HECTOR ENRIQUE CASTRO-ESTRADA
CASE NUMBER: DUTX206CR000390-0001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Time served. Upon completion of this term of imprisonment, the defendant shall be remanded to the Bureau of Immigration and Custom Enforcement for deportation proceedings.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HECTOR ENRIQUE CASTRO-ESTRADA
CASE NUMBER: DUTX206CR000390-0001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: HECTOR ENRIQUE CASTRO-ESTRADA
CASE NUMBER: DUTX206CR000390-0001

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: HECTOR ENRIQUE CASTRO-ESTRADA
CASE NUMBER: DUTX206CR000390-0001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
--------	----	-------------	----	-------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HECTOR ENRIQUE CASTRO-ESTRADA
CASE NUMBER: DUTX206CR000390-0001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. J. Thomas Greene


COURT REPORTER: Kelly Hicken

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: Grant Anderson

CASE NO. 5-CR-637 JTG & 6-CR-414 JTG

USA v. Said Barron-Maciel

Approved By: 

APPEARANCE OF COUNSEL

Pla Brett R. Parkinson, AUSA
Dft Carlos A. Garcia, FPD
USPO Maria Sanchez

DATE: August 9, 2006, 11:06 AM

MATTER SET: Status Conference/Preliminary Revocation Hearing/Change of Plea

(38 mins)

DOCKET ENTRY:

Dft pres & in custody. Interpreter previously sworn. Mr. Garcia asserts his client speaks & understands the English language. Mr. Grant to be on standby. Dft has BICE detainer.

● **5-CR-637 JTG (formerly DKW)**

Preliminary Revocation Hearing

Dft admits to allegation 1 of the supervised release violation petition. Crt finds violation & revokes supervised release. U.S. Prob to update presentence report.

● **6-CR-414 JTG**

Change of Plea

Dft sworn & testifies. Govt informs Crt that dft on "fast track program" as an illegal reentry case. Rights, max/min penalties explained. Stmt in Adv of POG signed & filed with the Crt. Ctn 1 of the Indictment read. Dft pleads guilty to Ctn 1 of the Indictment. Crt finds that there is a factual basis for the charge & that the plea is freely & voluntarily given. Crt adjudges the dft guilty & orders presentence report. Crt schedules:

- Sentencing set 10/25/2006, at 2:30 PM, on both cases.

Dft remanded to custody of USMS.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

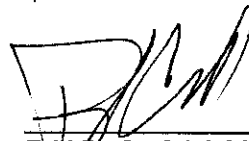
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No.: 2:01cr00365 PGC
	:	Associated with: 2:06cr00468 DB
Plaintiff,	:	
vs.	:	ORDER FOR MOTION TO RE-
	:	ASSIGN CASE
MIGUEL ANGEL SANCHEZ-JAIMES,	:	
Defendant.	:	JUDGE PAUL G. CASSELL

Based on the United States' motion, and good cause appearing, this Court
orders the clerk's office to re-assign Case No. 2:06cr00468 DB to Judge Cassell.

IT IS SO ORDERED.

Dated this 11th day of August, 2006.



PAUL G. CASSELL
District Court Judge

AUG 11 2006

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HOST AMERICA CORPORATION, a
Colorado corporation,

Plaintiff,

vs.

COASTLINE FINANCIAL, INC., an
Arizona corporation,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06 CV 5 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Brooke C. Wells. Judge Wells is directed to hear and determine any nondispositive matters pending before the court.

DATED this 11th day of August, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

Brian C Johnson, USB No. 3936
Heather Waite-Grover, USB No. 10991
STRONG & HANNI
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 596-1508

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOSE R. HERNANDEZ,)	
)	
Plaintiff,)	ORDER GRANTING MOTION FOR
)	WITHDRAWAL AND SUBSTITUTION
vs.)	OF COUNSEL
)	
LOW BOOK SALES AND LEASING,)	Case No. 2:06CV00031 TC
INC., JARROD E. CLARKE, RUEBEN)	
SOTELO, and JOHN DOES 1-10, et al.,)	District Judge Tena Campbell
)	Magistrate Judge David Nuffer
Defendants.)	

Based upon the Motion to Withdraw and Substitution as Counsel filed by counsel for Defendants, and good cause appearing therefor, it is HEREBY ORDERED that Lisa Gray be permitted with withdraw from this matter and that Heather Waite-Gover enter an appearance. The motion is hereby GRANTED.

DATED this 11th day of August, 2006.

BY THE COURT:



David O. Nuffer
United States District Court Magistrate

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2006, a true and correct copy of the foregoing
ORDER GRANTING MOTION FOR WITHDRAWAL AND SUBSTITUTION OF
COUNSEL was served by the method indicated below, to the following:

Steven R. Lawrence, Jr.	(X)	CM/ECF electronic notification
LAWRENCE, LAWRENCE & VELEZ, LLC	()	U.S. Mail, Postage Prepaid
311 South State Street, Suite 380	()	Hand Delivered
Salt Lake City, Utah 84111-5215	()	Overnight Mail
	()	Facsimile
<i>Attorneys for Plaintiff</i>		

/s/ Brian C Johnson

5843.00001

Bryon J. Benevento (5254)
Kimberly Neville (9067)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE MILLER FAMILY LIVING TRUST,
suing individually and derivatively as a
shareholder of TTR HP, INC. dba as Aero
Exhaust, a Nevada corporation,

Plaintiff,

v.

TTR, HP, Inc. dba as Aero Exhaust, a
Nevada corporation, BRYAN
HUNSAKER, an individual, KENDALL
WOOLSENHULME, an individual,
DAVID RICHARDS, an individual,
STEVEN J. WRIDE, an individual, and
John Does 1-5.,

Defendants.

SCHEDULING ORDER AND ORDER
VACATING PRE-TRIAL CONFERENCE

Case No. 2:06cv00345 PGC

Judge Paul G. Cassell

Magistrate Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge Brooke Wells received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for October 11, 2006, at 2:30 p.m. is VACATED.

1.	PRELIMINARY MATTERS	<u>DATE</u>
	a. Was Rule 26(f)(1) Conference held?	<u>8/8/06</u>
	b. Has Attorney Planning Meeting Form been submitted?	<u>8/10/06</u>
	c. Was 26(a)(1) initial disclosure completed?	<u>8/25/06</u>
2.	DISCOVERY LIMITATIONS	<u>NUMBER</u>
	a. Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
	b. Maximum Number of Depositions by Defendant(s)	<u>10</u>
	c. Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
	d. Maximum Interrogatories by any Party to any Party	<u>25</u>
	e. Maximum requests for admissions by any Party to any Party	<u>Per Rules</u>
	f. Maximum requests for production by any Party to any Party	<u>Per Rules</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES ⁱ	
	a. Last Day to File Motion to Amend Pleadings / Add Parties	<u>Plaintiff:</u> <u>12/31/06</u>
		<u>Defendant:</u> <u>1/31/07</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS	
	a. Plaintiff	<u>4/16/07</u>
	b. Defendant	<u>5/16/07</u>
	c. Counter reports	<u>5/31/07</u>

5.	OTHER DEADLINES	
a.	Discovery to be completed by:	
	Fact discovery	<u>3/30/07</u>
	Expert discovery	<u>7/2/07</u>
b.	Deadline for filing dispositive or potentially dispositive motions	<u>8/3/07</u>
6.	SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a.	Referral to Court-Annexed Mediation	<u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>No</u>
c.	Evaluate case for Settlement/ADR on	<u>3/30/07</u>
d.	Settlement probability:	<u>Fair</u>
7.	TRIAL AND PREPARATION FOR TRIAL:	
a.	Rule 26(a)(3) Pretrial Disclosures ⁱⁱ	
	Plaintiff	11/06/07
	Defendant	11/20/07
b.	Objections to Rule 26(a)(3) Disclosures	11/27/07
		<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before	12/04/07
d.	Settlement Conference ⁶ on or before	12/04/07
e.	Final Pretrial Conference at 3:00 p.m.	12/18/07

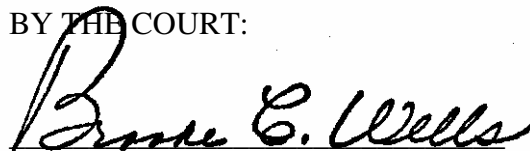
f. Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
i. Jury Trial	<u>5 days</u>	<u>8:30 a.m.</u>	<u>1/7/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

DATED this 14th day of August, 2006.

BY THE COURT:



Honorable Brooke C. Wells
United States Magistrate Judge

-
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
 4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
 5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.
 6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

There are currently nine active cases in the United States District Court of Utah involving the same pro se plaintiff. The plaintiff filed all nine cases within six days. As defendants, the plaintiff has named Social Security Administration or various cities throughout New Jersey. The facts and issues in each of the cases appear to be substantially similar. The first case the plaintiff filed was assigned to Judge Paul Cassell. So in the interest of judicial efficiency, and as allowed under Rule 42-1 of the local rules, the following cases shall be consolidated and transferred to Judge Paul Cassell:

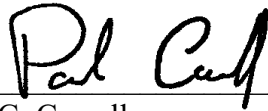
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2:06-CV-00476 DB: Campbell v. Jersey City, New Jersey
2:06-CV-00477 TS: Campbell v. Municipality of Lakewood
2:06-CV-00479 PGC: Campbell v. Municipality of Teaneck et al

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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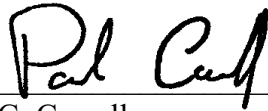
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United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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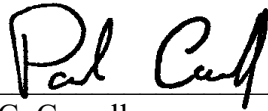
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Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BENEFICIAL INTERNATIONAL, INC.,

Plaintiff,

vs.

THE BODY DETOX, INC., J. LYNN
WILDE, CHRISTOPHER P. WILDE, and
JANE DOES 1-10,

Defendant.

PRELIMINARY INJUNCTION AND
HEARING SCHEDULING ORDER

Case No. 2:06-CV-468 PGC

On June 12, 2006, the court ordered defendants to provide a response to plaintiff Beneficial International Inc.'s motion for a preliminary injunction by July 6, 2006 [#8]. Both parties then stipulated to a stay of the motion based on one of the defendant's poor health. On August 4, 2006, the parties informed the court that they were ready to proceed.

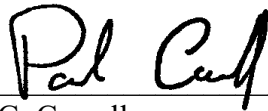
The court orders the defendants to provide a response to Beneficial International's motion for preliminary injunction by August 25, 2006. Beneficial International may provide a reply to the court by September 6, 2006. The court schedules a hearing on this matter on September 13, 2006, at 3:00 PM. Counsel are requested to note that this hearing is not an evidentiary hearing, but rather a hearing on the arguments set forth by the plaintiff and defendants. Those arguments may include proffers of what an evidentiary hearing might be expected to establish and/or

affidavits establishing relevant facts. The court anticipates that the motion for a preliminary junction can be resolved based on written submissions. If a further evidentiary hearing is necessary, it can be scheduled on September 13, 2006. Given the tight deadline of the hearing, no further extensions of these deadlines will be granted absent good cause shown.

SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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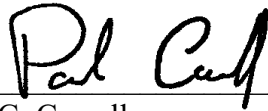
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SO ORDERED.

DATED this 11th day of August, 2006.

BY THE COURT:

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Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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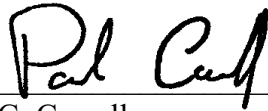
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Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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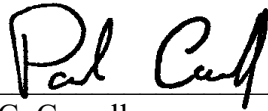
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United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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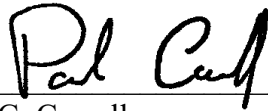
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Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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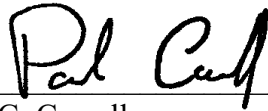
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Paul G. Cassell
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,
Section of Determination of Discontinuing
Benefits,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-CV-00459 PGC

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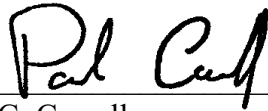
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SO ORDERED.

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Paul G. Cassell
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

RANDY THOMAS NAVES,

Plaintiff,

vs.

WIL CARLSON, et. al.,

Defendants.

ORDER OF REFERENCE

Case No. 2:06-CV-658

Judge Dee V. Benson

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge David Nuffer. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 11th day of August, 2006.

BY THE COURT:



DEE BENSON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DANIEL LEE LAIRD,)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
MICHAEL SIBBETT et al.,)	O R D E R
)	
Defendants.)	

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
AUG 14 2006
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

Plaintiff, Daniel Lee Laird, an inmate at Utah State Prison, submits a *pro se* civil rights complaint.¹ The filing fee is \$350.² However, Plaintiff asserts he is unable to prepay the filing fee. He thus applies to proceed without prepaying the filing fee and submits a supporting affidavit.³ Plaintiff also moves for appointed counsel and service of process.

The Court first grants Plaintiff's request to proceed without prepaying the entire filing fee. Even so, Plaintiff must eventually pay the full \$350.00.⁴ Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his prison] account . . . or . . . the average monthly balance in [his prison] account for the 6-month period immediately preceding the filing of the

¹See 42 U.S.C.S. § 1983 (2006).

²See 28 *id.* § 1914(a).

³See *id.* § 1915(a).

⁴See *id.* § 1915(b)(1).

Judge J. Thomas Greene
DECK TYPE: Civil
DATE STAMP: 08/14/2006 @ 14:32:51
CASE NUMBER: 2:06CV00671 JTG

4

complaint."⁵ Under this formula, Plaintiff must pay \$1.00. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no way to pay it, the complaint will be dismissed.

So the Court may collect the remaining filing fee, Plaintiff must also within thirty days complete the attached "Consent to Collection of Fees" form, submitting the original to the inmate funds accounting office and a copy to the Court. Based on this consent form, Plaintiff's correctional institution will make monthly payments from Plaintiff's inmate account equal to twenty percent of each month's income.

Second, the Court considers Plaintiff's motion for appointed counsel. Plaintiff has no constitutional right to counsel.⁶ The Court may, however, in its discretion appoint counsel for indigent inmates.⁷ The applicant has the burden of showing that his claim has enough merit to justify the Court in appointing counsel.⁸

When deciding whether to appoint counsel, the Court studies a variety of factors, "including 'the merits of the litigant's

⁵*Id.*

⁶*See Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

⁷*See* 28 U.S.C.S. § 1915(e)(1) (2006); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

⁸*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"⁹ Considering these factors, the Court concludes that (1) it is unclear at this time that Plaintiff has asserted a colorable claim; (2) the issues here are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

Third, the Court denies Plaintiff's motion for service of process. This motion is unnecessary because Plaintiff is proceeding *in forma pauperis*.¹⁰ In such cases, "[t]he officers of the court *shall* issue and serve all process, and perform all duties in such cases."¹¹ The Court will screen Plaintiff's amended complaint at its earliest convenience and determine whether to dismiss it or order it to be served upon Defendants.¹² Plaintiff need do nothing to trigger this process.

IT IS THEREFORE ORDERED that:

(1) Plaintiff may proceed without prepaying his filing fee; however, he must eventually pay the full filing fee of \$350.00.

⁹*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (citation omitted); accord *McCarthy*, 753 F.2d at 838-39.

¹⁰See 28 U.S.C.S. § 1915 (2006).

¹¹See *id.* § 1915(d) (emphasis added).

¹²See *id.* § 1915A.

(2) Plaintiff must pay an initial partial filing fee of \$1.00 within thirty days.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office or other appropriate office at Plaintiff's correctional facility.


(5) Plaintiff shall complete the consent to collection of fees and submit it to his correctional institution's inmate funds accounting office and also submit a copy of the signed consent to this Court within thirty days from the date of this Order.

(6) Plaintiff's request for appointed counsel is denied; however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear *pro bono* on Plaintiff's behalf.

(7) Plaintiff's motion for service of process is denied; however, if, after the case is screened, it appears that this complaint states a claim upon which relief may be granted, the Court will order service of process.

DATED this 11th day of August, 2006.

BY THE COURT:


PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Daniel Laird, understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is later dismissed.

I, Daniel Laird, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$1.00, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

Signature of Inmate
Daniel Laird

UNITED STATES DISTRICT COURT

Central

District of

UTAH

Harry D. Willett

Plaintiff

V.

C.R. England et al.

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Judge Bruce S. Jenkins

DECK TYPE: Civil

DATE STAMP: 08/14/2006 @ 14:36:09

CASE NUMBER: 2:06CV00673 BSJ

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 14 2006

MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 10th day of August, 2006.


Signature of Judge

Magistrate Judge Paul M. Warner

Name and Title of Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICHARD DEE THOMAS,
Plaintiff,

v.

GEORGE VAUGHN et al.,
Defendants.

Case No. 2:93-CV-925 PGC

MEMORANDUM DECISION
AND ORDER

Plaintiff, Richard Dee Thomas, an inmate at the Utah State Prison, filed this pro se civil rights suit under [42 U.S.C. § 1983](#). Plaintiff's motion to proceed *in forma pauperis* and motion for appointed counsel were granted. This case is now before the Court for screening of Plaintiff's First Amended Complaint under [28 U.S.C. § 1915\(e\)](#), and for consideration of Plaintiff's Motion for Partial Summary Judgment which has been fully briefed.

ANALYSIS

I. Procedural Background

Plaintiff filed this pro se civil rights action on October 18, 1993, while awaiting trial in the Utah Third District Court on the charge of aggravated robbery. The original complaint named as defendants four officers with the Salt Lake City Police Department: George Vaughn, Don Bell, Ray Dalling and Ron Hunt. The complaint identified three separate civil rights claims including: unreasonable search and seizure under the Fourth

Amendment, violation of the Fifth Amendment prohibition against compelled self-incrimination, and, use of excessive force during arrest.

On August 4, 1995, Plaintiff was convicted of aggravated robbery in state court. In April 1997 the Court ordered official service of process upon the original defendants who promptly answered the original complaint. The Court later appointed counsel to represent Plaintiff in November 1998. Plaintiff's counsel, Karl R. Cannon, then filed a motion to stay this action pending the outcome of parallel state court proceedings. A stay was granted on November 12, 1999, and the case was administratively closed on September 22, 2000. By December 2002 Plaintiff had fully exhausted his direct appeals and habeas corpus review in the state courts, however, Plaintiff's counsel never filed a motion to lift the stay and proceed with this case.

On June 24, 2004, Plaintiff, acting pro se, filed an *ex parte* motion to reopen this case. The matter was referred to the magistrate judge under [28 U.S.C. § 636\(b\)\(1\)\(B\)](#). After denying Mr. Cannon's motion to withdraw as Plaintiff's counsel, a status conference was held and a scheduling order was entered. The Court also granted Plaintiff's motion to amend the complaint.

On August 25, 2005, Plaintiff filed his First Amended Complaint naming eight additional individual defendants and the municipality of Salt Lake City. To date, Defendants have not

filed an answer to Plaintiff's First Amended Complaint. Defense counsel asserts that the amended complaint was never properly served on any of the defendants, however, Mr. Cannon has filed copies of email correspondence between himself and defense counsel, Mr. Robinson, evidencing their agreement that service of the First Amended Complaint on the original four defendants and Salt Lake City was proper. The correspondence also states that Mr. Robinson agreed to contact the additional individual defendants to determine whether he could accept service on their behalf, or whether they would prefer to be served personally. It is not clear whether Mr. Robinson ever contacted those individuals or how they responded. On February 21, 2006, Plaintiff filed the present Motion for Partial Summary Judgment which has now been fully briefed and is properly before the Court.

II. Motion for Partial Summary Judgment

A. Facts¹

The civil rights violations alleged by Plaintiff stem from events surrounding his arrest on suspicion of aggravated robbery on the morning of July 1, 1993. The previous evening, officers from the Salt Lake City Police Department (SLCPD) responded to a call of an armed robbery at the Kentucky Fried Chicken restaurant located at 132 North Redwood Road in Salt Lake City. Officers spoke with the manager of the restaurant who provided a description of the suspect and stated that the suspect was armed at the time of the robbery. While securing a parking lot near the restaurant where some coins had reportedly been dropped by the suspect, Officers Price and Louis were approached by an unidentified female who was curious about what was happening. The officers told the woman about the robbery and described the suspect to her as a tall, black, male, possibly carrying a bag. The woman stated that a person matching that description might be located in apartment #82 of a nearby apartment complex. Officers

¹ The facts presented here are drawn primarily from the memorandum supporting Plaintiff's Motion for Partial Summary Judgment and the attached exhibits. Although Defendants initially objected to Plaintiff's statement of undisputed facts generally, challenging the authenticity of Plaintiff's supporting documentation, Plaintiff has since filed authenticated copies of those documents and Defendants have not raised any further objections to them. Defendant's opposition memorandum only raised three specific objections to Plaintiff's statement of facts which are noted herein.

Lewis, Price, and Jones (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 8) then went to the apartment to verify the woman's statement. Jones and Louis approached the door of the apartment where they observed Plaintiff through the window. The officers identified themselves but Plaintiff refused to open the door and instead came to the window and adjusted the shades. Officers then spoke to neighbors who confirmed that the man living in apartment #82 matched the description of the robbery suspect. Officers again yelled at Plaintiff to open the door but he did not respond. Officer Jones reports that at this point she believed the officers had probable cause to "kick the door." (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 4) Jones then developed a plan to forcibly enter the apartment with Officers Louis and Williams, while Officer Price secured the rear of the apartment.² (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 4 & 10) Louis states that he forced the door open and accompanied Officers Jones and Williams into the living room.³ (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 8) Officer Vaughn's report, however, states that officers Jones,

² Officer Louis' supplemental report states that "several officers covered the rear." (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 9)

³ Officer Louis' supplemental report states that he merely shined his flashlight into the living room after kicking in the door. It does not mention officers actually entering the living room. (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 9 at 2.)

William, Louis and Larsen were responsible for making entry.⁴

(Aff. Supp. Pl.'s Mot. Summ. J. Ex. 2) Upon Defendants entry, Plaintiff allegedly yelled from a back room that he had a hostage whom he would harm if officers did not back off. The officers then exited the apartment and waited for backup.⁵

Shortly thereafter, Sergeant Vaughn and Lieutenant Schroen arrived on the scene and began negotiating with Plaintiff. At approximately 2:30 a.m. on July 1, 1993, Officer Dalling states that he received a phone call from Sergeant Jackson at the scene of the standoff. (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 2) Jackson asked Dalling to report to the crime scene where he met with Lieutenant Atkinson. Atkinson gave Dalling the details concerning the robbery and instructed Dalling to go prepare a search warrant for Plaintiff's apartment.

⁴ Vaughn states that the officers made entry "in pursuit of an armed suspect," however, there is no evidence that Vaughn was present at the time of the entry, and none of the officers actually present reported seeing Plaintiff armed in the apartment.

⁵ According to the Affidavit for Search Warrant provided by Plaintiff, Officer Hunt was also present when officers knocked on Plaintiff's door and later assisted in forcing entry into the apartment. Defendants challenge this claim, pointing out that the Affidavit for Search Warrant was prepared by Officers Dalling and Jackson who were not present at the time these events occurred. In addition, this statement appears to contradict the statements of other officers who were actually present. And, the only copy of the Affidavit for Search Warrant that has been found is unsigned and unexecuted. Thus, because a genuine issue of fact remains as to whether Hunt actually participated in the initial search, summary judgment against Hunt on this claim would clearly be inappropriate at this time.

Once Dalling completed the draft warrant application he gave it to Paul Parker for approval before presenting it to Commissioner Palacios for her signature. Dalling states that Sergeant Jackson "assisted [Dalling] in writing the warrant and getting the judge's signature" and the two then returned to the apartment with the warrant.⁶ (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 2) Approximately forty-five minutes to an hour after they returned, Plaintiff surrendered and S.W.A.T. officers entered the apartment to search for hostages. Dalling states that he and Jackson then "served the search warrant on the apartment."

B. Summary Judgment Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses" [Cellotex v. Catrett, 477 U.S. 317, 324, 106 S.](#)

⁶ Defendants opposition memorandum asserts there is no support for Plaintiff's statements that "Dalling and H. Jackson went to obtain a search warrant;" "Dalling and Jackson met with Commissioner Frances M. Palacios;" and, "Dalling served the search warrant, entered Thomas's apartment or searched it" However, these statements are clearly supported by the Supplemental Field Notes prepared by Dalling himself. (Aff. Supp. Pl.'s Mot. Summ. J. Ex. 2)

[Ct. 2548, 2553 \(1986\)](#). Thus, Rule 56(a) of the Federal Rules of Civil Procedure allows a party to move “with or without supporting affidavits for a summary judgment in the party’s favor upon *all or any part* [a claim].” Fed. R. Civ. P. 56(a) (emphasis added).

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” which it believes demonstrate the absence of a genuine issue of material fact. Fed. R. Civ. P. 56. A movant who would bear the burden of proof at trial must submit evidence to establish every essential element of its claim or affirmative defense. See [In re Ribozyme Pharmaceuticals, Inc. Securities Litigation](#), 209 F. Supp.2d 1106, 1111 (D. Colo. 2002). A party who does not have the burden of proof at trial must show the absence of a genuine fact issue. [Concrete Works, Inc. v. City & County of Denver](#), 36 F.3d 1513, 1517 (10th Cir. 1994). In either case, once the motion has been properly supported, the burden shifts to the nonmovant to show, by tendering depositions, affidavits, and other competent evidence, that summary judgment is not proper. [Concrete Works](#), 36 F.3d at 1518. All the evidence must be viewed in the light most favorable to the party opposing the motion. [Simms v.](#)

Oklahoma ex rel Dep't of Mental Health and Substance Abuse Services, 165 F.3d 1321, 1326 (10th Cir.), cert. denied, 528 U.S. 815, 120 S. Ct. 53 (1999). However, conclusory statements and testimony based merely on conjecture or subjective belief are not competent summary judgment evidence. Rice v. United States, 166 F.3d 1088, 1092 (10th Cir.), cert. denied, 528 U.S. 933, 120 S. Ct. 334 (1999).

III. Fourth Amendment Analysis

A. Search Pursuant to Invalid Warrant

Plaintiff asserts that the search of his apartment following his surrender to police was unreasonable under the Fourth Amendment because it was not conducted with a valid warrant. Plaintiff argues that the warrant issued by Commissioner Palacios was invalid because it was issued by a Court Commissioner rather than a judge.

i. Validity of the Warrant

Plaintiff previously challenged the validity of the Palacios warrant in his state court appeals, in his state habeas proceedings, and also in a separate civil rights suit in this court. On direct appeal of Plaintiff's conviction the Utah Supreme Court concluded that Utah law prohibits court commissioners from issuing search warrants, however, it found that warrants issued by court commissioners prior to that ruling were nevertheless valid under the doctrine of de facto authority.

State v. Thomas, 961 P.2d 299, 303-4, (Utah 1998). Despite the prospective nature of its holding, however, the Utah Supreme Court found that the de facto doctrine should not apply to Plaintiff's case because to do so would deny Plaintiff the "fruits of [his] victory." Id. at 302. The Utah Supreme Court thus remanded the case to the Utah Court of Appeals to determine "whether the trial court's failure to suppress evidence obtained from the search [pursuant to the Palacios warrant] constituted reversible error." Id. at 305. On remand, the Utah Court of Appeals observed that "the invalid search amount[ed] to a violation of a federally protected constitutional right," but ultimately concluded that the failure to suppress evidence obtained from the search was harmless error. *State v. Thomas*, 1999 WL 33244831, No. 961170-CA, at *1 (Utah Ct. App. Feb. 25, 1999).

Plaintiff argues that this Court should adopt the Utah Court of Appeals' statement that the search pursuant to the Palacios warrant violated Plaintiff's federal constitutional rights. However, it appears from the Utah Court of Appeals opinion that this statement was intended as merely a working assumption for addressing the issue actually before that court, not as a conclusion of law with preclusive effect. The question whether the Palacios warrant violated the Fourth Amendment to the United States Constitution was not properly before the Utah Court of

Appeals on remand. Thus, the Court finds that the Utah Court of Appeals statement regarding the constitutionality of the Palacios warrant under federal law is merely dictum, and is not controlling here.

ii. Collateral Estoppel

Although the Utah Supreme Court found that the warrant issued by Palacios was invalid under the Utah Constitution, the question whether the warrant violated federal law has been previously addressed by this Court. In 1995 Plaintiff filed a separate civil rights suit against Commissioner Palacios alleging that she violated his civil rights by issuing the search warrant for his apartment without proper authority. *Thomas v. Palacios*, No. 2:95-CV-128-DS (D. Utah Nov. 9, 1998). The Court ultimately dismissed that case, concluding that the issuance of warrants by court commissioners does not amount to a Fourth Amendment violation; and, although her actions were later found to violate Utah law, Palacios nevertheless acted with de facto authority entitling her to absolute judicial immunity. (Doc. No. 22 Report and Recommendation; [Doc No. 24](#) Order Adopting R&R.) On appeal, the Tenth Circuit affirmed the decision solely on judicial immunity grounds. [Thomas v. Palacios, 194 F.3d 1321](#), No. 98-4196, 1999 WL 710340 (10th Cir. Sept. 13, 1999).

Under the doctrine of collateral estoppel, also known as issue preclusion, “once a court has decided an issue of fact or

law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” [Allen v. McCurry](#), [449 U.S. 90, 94, 101 S. Ct. 411, 414 \(1980\)](#). In addition, a litigant who was not a party to the earlier case may use collateral estoppel “offensively” in a new federal suit, so long as the party against whom the earlier decision is asserted had a “full and fair opportunity” to litigate the issue in the earlier case. [Id. at 95](#).

Plaintiff clearly had a “full and fair opportunity” to litigate the constitutionality of the warrant issued for his apartment in his civil rights suit against Palacios. Because this court has already decided this issue against Plaintiff, he is barred by collateral estoppel from relitigating it here. Thus, the Court concludes that Plaintiff’s allegations of unreasonable seizure under the Fourth Amendment based on the legality of the Palacios warrant must be dismissed based on collateral estoppel.

B. Initial Warrantless Entry

Plaintiff also alleges that the initial warrantless entry into his apartment amounted to an unreasonable search in violation of the Fourth Amendment. “It is a basic principle of Fourth Amendment law that searches and seizures inside the home without a warrant are presumptively unreasonable unless the

police can show both probable cause and the presence of exigent circumstances.” [Marshall v. Columbia Lea Regional Hospital, 345 F.3d 1157, 1172 \(10th Cir. 2003\)](#). “[E]xceptions to the warrant requirement must be specifically established, well delineated, and jealously and carefully drawn.” [United States v. Aquino, 836 F.2d 1268, 1270 \(10th Cir. 1988\)](#). Exigent circumstances may justify warrantless searches when: (1) there is probable cause for the search or seizure, and the evidence is in imminent danger of destruction, [Cupp v. Murphy, 412 U.S. 291, 294-96, 93 S. Ct. 2000 \(1973\)](#); (2) the safety of law enforcement or the general public is threatened, [Warden v. Hayden, 387 U.S. 294, 298-99, 87 S. Ct. 1642 \(1967\)](#); (3) the police are in “hot pursuit” of a suspect, [United States v. Santana, 427 U.S. 38, 42-43, 96 S. Ct. 2406 \(1976\)](#); or (4) the suspect is likely to flee before the officer can obtain a warrant, [Minnesota v. Olson, 495 U.S. 91, 100, 110 S. Ct. 1684 \(1990\)](#). The existence of exigent circumstances is a mixed question of law and fact. See [United States v. Stewart, 867 F.2d 581, 584 \(10th Cir. 1989\)](#).

It is undisputed that Defendants’ forced opening of the door to Plaintiff’s apartment, regardless of whether they physically entered the apartment as stated in multiple police reports, or merely forced the door open and shined a flashlight into the living room as Officer Louis’ revised statement suggests, amounted to a search for Fourth Amendment purposes. Thus, the

burden is on the government to prove that the officers had probable cause and that exigent circumstances existed that made a warrantless entry necessary. [U.S. v. Chavez, 812 F.2d 1295, 1298 \(10th Cir. 1987\)](#). In determining whether the government has met its burden, the Court must "evaluate the circumstances as they would have appeared to prudent, cautious and trained officers." [United States v. Cuaron, 700 F.2d 582, 586 \(10th Cir. 1983\)](#).

It is undisputed that Defendants had probable cause to believe that the suspected robber of the nearby KFC restaurant was present inside Plaintiff's apartment. This belief was based not only on the information provided by the anonymous informant, but also on the fact that officers were able to observe a person matching the description provided by the restaurant manager through the window of the apartment. In addition, Defendants also had confirmation from Plaintiff's neighbors that an occupant of the apartment indeed matched the description of the suspect. Thus, the primary issue here is whether exigent circumstances existed to justify entering the apartment without first obtaining a warrant. Defendants assert that exigent circumstances existed for two reasons: first, because Plaintiff posed a threat to the safety of officers and the public; and, second, because of the risk that Plaintiff might escape or destroy evidence. (Def.'s Mem. Opp. Summ. J. at 7.)

i. Public/Officer Safety

Defendants assert that warrantless entry into Plaintiffs apartment was justified because Plaintiff was suspected of recently committing an armed robbery and therefore “*could have posed a threat not only to [the officers], but to the safety of the public.*” Id. (emphasis added) Concern for the safety of police officers and the general public may amount to exigent circumstances justifying warrantless search of a dwelling only in very limited instances. The Tenth Circuit has articulated the following general framework for analyzing this type of exigent circumstances claim:

The basic aspects of the “exigent circumstances” exception are that (1) the law enforcement officers must have reasonable grounds to believe that there is immediate need to protect their lives or others or their property or that of others, (2) the search must not be motivated by an intent to arrest and seize evidence, and (3) there must be some reasonable basis, approaching probable cause, to associate an emergency with the area or place to be searched.

[United States v. Smith, 797 F.2d 836, 840 \(10th Cir. 1986\).](#)

These three requirements are conjunctive, meaning that the government has the burden of demonstrating each of them in order to overcome the Fourth Amendment’s general presumption that warrantless searches are unreasonable. See [U.S. v. Zogmaister, 90 Fed. Appx. 325, 330 \(10th Cir. 2004\).](#) The Tenth Circuit has also required that a government assertion of exigent circumstances be “supported by clearly defined indicators of

exigency that are *not subject to police manipulation or abuse.*" [Aquino, 836 F.2d at 1272](#) (emphasis added).

Under the first requirement the government must demonstrate that the officers had reasonable grounds to believe that there was an immediate need to protect their own lives or the lives of others. The record before the Court does not conclusively show this to be the case here. Although the officers might have reasonably assumed that Plaintiff was still armed, based on the fact that a weapon was used in the robbery, this alone does not justify their immediate entry into Plaintiff's apartment. In fact, absent other circumstances showing an immediate threat to the officers or others, the possibility that Plaintiff was armed should have led Defendants to proceed more cautiously.

Regarding the second requirement, the record in this case shows that the officers decision to enter Plaintiff's apartment may have been motivated by their desire to arrest Plaintiff and seize evidence relevant to the robbery they were investigating. Undoubtedly, the reason the officers arrived at the apartment in the first place was based on their investigation into the location of possible suspects in the armed robbery nearby.

Finally, turning to the third requirement, officers cannot rely upon exigent circumstances to justify a warrantless search where the exigency was created by the officer's own actions. See [United States v. Mikulski, 317 F.3d 1228, 1233 \(10th Cir. 2003\)](#).

This requirement stems from a concern that “well-meaning police officers may exploit such opportunities without sufficient regard for the privacy interests of the individuals involved.” [United States v. Aquino, 836 F.2d 1268, 1272 \(10th Cir. 1988\)](#). While Defendants in this case undoubtedly faced some danger standing just outside Plaintiff’s apartment, given the possibility that he might be armed, this risk could presumably have been alleviated simply by surrounding the apartment at a safer distance and awaiting backup. In fact, this seems to be a much more sensible approach to ensuring their safety than kicking in the door and conducting a warrantless search.

The only precedent cited by Defendants to support the warrantless entry here is the case of [Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 87 S. Ct. 1642 \(1976\)](#). In that case the Supreme Court upheld the admissibility of evidence seized during the warrantless search of a home into which an armed robber had reportedly fled less than five minutes before the officers arrived. There, officers knocked and announced their presence and were greeted by an occupant who, after being told that an armed robber was believed to have entered her house, offered no objection when the officers asked to search. The officers quickly located the suspect within the home and placed him under arrest while other officers continued to search and seize evidence in other parts of the home. Finding that the evidence

was not seized in violation of the Fourth Amendment the Supreme Court stated that “[t]he Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.” [Id.](#) [at 298-9.](#)

Despite this seemingly broad pronouncement, however, the facts presented in *Hayden* clearly limit its applicability to a very narrow set of circumstances. In that case, officers were actually in “hot pursuit” of the suspect, arriving on the scene less than five minutes after witnesses who followed the suspect from the scene of the robbery watched him enter the home. In addition, the officers knocked and actually received permission to search the home before entering. And, there were others inside the dwelling who may have been in immediate danger. Thus, *Hayden* is easily distinguishable because none of those circumstances existed in this case.

In the present case the officers did not even arrive at Plaintiff’s apartment until approximately forty-five minutes after the robbery, by which time it was unclear whether the suspect was still armed or whether he had already disposed of the weapon used in the robbery. Also, unlike in the *Hayden* case, nobody actually followed Plaintiff from the scene of the robbery and observed him enter his apartment. Instead, Defendants were merely following a lead provided by an unidentified informant to

determine Plaintiff's probable location. Finally, officers had no reason to believe that anyone else was in Plaintiff's apartment who might be in danger until after they entered without a warrant and Plaintiff falsely stated that he had a hostage.

Thus, the Court finds that the record before it does not support the conclusion that the warrantless search here was necessitated by the need to protect officers or the public.

ii. Escape/Destruction of Evidence

As an alternative justification for the warrantless entry here Defendants assert that exigent circumstances existed due to the possibility that delay might allow Plaintiff to either destroy evidence or escape. The Tenth Circuit has identified four factors relevant to determining whether a warrantless search is reasonable based on police fears that a suspect may destroy evidence, these are: (1) whether there was clear evidence of probable cause, (2) the seriousness of the crime committed and the likelihood that evidence might be destroyed, (3) whether the search is limited in scope to the minimum intrusion necessary to prevent the destruction of evidence, and (4) whether the search is supported by clearly defined indicators of exigency that are not subject to police manipulation or abuse. See [Aguino, 836 F.2d at 1272](#). Regarding the second factor, the mere possibility that evidence could be destroyed is insufficient to create exigent circumstances, instead, officers must have "a reasonable

belief that the loss or destruction of evidence is imminent.'"

U.S. v. Anderson, 981 F.2d 1560, 1568 (10th Cir. 1992) (quoting *U.S. v Radka*, 904 F.2d 357, 362 (6th Cir. 1990)).

Once again, the Court notes that Defendants had probable cause to believe that the perpetrator of an armed robbery, obviously a serious crime, was present in Plaintiff's apartment. However, Defendants have not pointed to any evidence showing that the destruction of evidence by Plaintiff was reasonably likely or imminent in this instance. Defendants not only fail to state what evidence they reasonably believed was in imminent danger of destruction, they also have not alleged any facts to support the assumption that the evidence was located inside the apartment. Unlike most of the cases cited by Defendants, this case does not involve drug evidence which is easily destroyed. Presumably the evidence Defendants sought to preserve included the weapon used in the robbery and the money taken. Although it is conceivable that Plaintiff might have tried to destroy this evidence while officers obtained a warrant, based on the facts alleged, the possibility seems remote given the nature of the evidence and the proximity of the officers.

Similarly, Defendants have not met their burden of showing a likelihood that Plaintiff might escape during the time required to obtain a warrant. The record clearly shows that Plaintiff was holed up inside his apartment and that there were numerous

officers surrounding the premises. It is unclear how Plaintiff might have easily escaped under these circumstances.

Thus, the Court cannot conclude from the record in this case that the possibility of Plaintiff escaping or destroying evidence necessarily created exigent circumstances justifying the warrantless entry into his apartment.

C. Qualified Immunity

Having concluded that the record in this is insufficient to show that the warrantless entry into Plaintiff's apartment was justified by exigent circumstances, the Court must now address Defendants' assertion of qualified immunity. The doctrine of qualified immunity shields government officials from individual liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." [*Harlow v.*](#)

[*Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 \(1982\)](#).

Qualified immunity is "an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go trial."

[*Saucier v. Katz*, 533 U.S. 194, 200-01 \(2001\)](#) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). Thus, immunity questions

should be addressed at the earliest possible stage in litigation.

[*Id.*](#) (citing [*Hunter v. Bryant*, 502 U.S. 224, 227 \(1991\)](#) (per [*curiam*](#))).

Because of the underlying purposes of qualified immunity, courts address qualified immunity questions differently from other summary judgment decisions. [Medina v. Cram, 252 F.3d 1124, 1128 \(10th Cir. 2001\)](#). After a defendant asserts a qualified immunity defense, the burden shifts to the plaintiff, who must meet a "heavy two-part burden." [Id.](#) Plaintiff must first establish that the facts, taken in the light most favorable to Plaintiff, show that the officer's conduct violated a constitutional right. [Saucier, 533 U.S. at 201](#). If Plaintiff establishes a violation of a constitutional or statutory right, "the next, sequential step is to ask whether the right was clearly established." [Id.](#) This determination must be made "in the light of the specific context of the case, not as a broad general proposition." [Id.](#) And, "the relevant, dispositive inquiry . . . is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." [Id. at 202](#). If the plaintiff fails to satisfy either part of this "heavy two-part burden," the Court must grant the defendant qualified immunity and dismiss the deficient claims.

In [Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034 \(1987\)](#), the Supreme Court specifically addressed the applicability of qualified immunity to Fourth Amendment cases. Commenting on its *Anderson* holding in a subsequent case, the

Court stated:

Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances Yet, even if a court were to hold that the officer violated the Fourth Amendment by conducting an unreasonable, warrantless search, *Anderson* still operates to grant officers immunity for reasonable mistakes as to the legality of their actions.

Saucier, 533 U.S. at 206. Thus, “*in addition to the deference officers receive on the underlying constitutional claim, qualified immunity can apply in the event the mistaken belief was reasonable.*” *Id.* (emphasis added).

It is undisputed that, as Plaintiff asserts, the Fourth Amendment prohibition against unreasonable searches and seizures was well established at the time of this incident. However, the Court finds that exact contours of the exigent circumstances exceptions relied on by Defendants were sufficiently uncertain that even legal scholars could disagree as to whether they applied here. Defendants clearly faced a rapidly evolving situation and the possibility of a dangerous confrontation with an armed robbery suspect. The Tenth Circuit has explained that under such ambiguous circumstances officers are entitled to qualified immunity so long as their mistake was reasonable. “A mistake of law may be ‘reasonable’ where the circumstances ‘disclose substantial grounds for the officer to have concluded he had a legitimate justification under the law for acting as he did.’” *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179,

[1196 \(10th Cir. 2001\)](#) (quoting *Saucier*, 533 U.S. at 208). Thus, although the Court finds that the record does not clearly show that exigent circumstances were present in this instance, the evidence does “disclose substantial grounds” supporting the conclusion that Defendants’ mistaken belief that exigent circumstances existed was reasonable. Accordingly, the Court finds that Defendants are entitled to qualified immunity against Plaintiff’s claim that the initial entry to his apartment violated the Fourth Amendment.

IV. Screening

A. Standard of Review

Under [28 U.S.C. § 1915\(e\) \(2\) \(B\)](#), a court shall dismiss any claims in a complaint filed *in forma pauperis* if they are frivolous, malicious or fail to state a claim upon which relief may be granted. [Id.](#) “Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.” [Perkins v. Kan. Dep’t of Corr.](#), 165 F.3d 803, 806 (10th Cir. 1999). When reviewing the sufficiency of a complaint the Court “presumes all of plaintiff’s factual allegations are true and construes them in the light most favorable to the plaintiff.” [Hall v. Bellmon](#), 935

[F.2d 1106, 1109 \(10th Cir. 1991\)](#).

B. Excessive Force During Arrest

Plaintiff's First Amended Complaint alleges that officers used excessive force during his apprehension and subsequent interrogation. Specifically, Plaintiff alleges that unidentified officers "jumped on and smashed Plaintiff's finger while he was handcuffed," and that Hunt, Dalling, and others "unlawfully assaulted and battered Plaintiff by, among other things, punching him and threatening to kill him" with the intent to force Plaintiff to sign a false confession.

In [Graham v. Connor, 490 U.S. 386, 393-94, 109 S. Ct. 1865, 1869-71 \(1989\)](#), the Supreme Court held that § 1983 claims based on excessive force during arrest are governed by the Fourth Amendment's "objective reasonableness" standard, and not the substantive Due Process standard. [Id.](#) The Fourth Amendment standard requires police conduct to be objectively reasonable in light of the facts and circumstances surrounding the defendants actions, irrespective of their underlying intent or motivation. [Frohman v. Wayne, 958 F.2d 1024, 1026 \(10th Cir. 1992\)](#).

Reasonableness must be viewed from the vantage point of the defendants on the scene, thus, "[t]he court cannot, in the serenity of its chambers, apply 20/20 hindsight in determining the reasonableness of the defendants' actions." [Id.](#) Finally, while minor injuries do not preclude an action for unreasonable

force, *de minimis* uses of physical force ordinarily do not rise to the level of a constitutional violation. See *Jarrett v. Schubert*, No. Civ. A. 97-2628-GTV, 1998 WL 471992 at *4 (D.Kan. Jul. 31, 1998) (citing [*Hudson v. McMillian*, 503 U.S. 1, 9-10 \(1992\)](#)).

The allegations in Plaintiff's First Amended Complaint are insufficient to support a claim of excessive force under the Fourth Amendment. Plaintiff's only allegations of improper physical force state that his finger was smashed during his arrest, and that he was punched in the body during a subsequent interrogation. Plaintiff's allegations attempt to portray Defendants' actions as unreasonable based primarily on conclusory allegations about Defendants possible intentions or motivations. However, to state a claim Plaintiff must allege sufficient facts to show that the actions were unreasonable "irrespective of their underlying intent or motivation." [*Frohman*, 958 F.2d at 1026](#). More importantly, however, the level of force allegedly used in this case appears to be *de minimis*. Plaintiff does not allege that he suffered any injury whatsoever from the alleged attacks, nor do the circumstances show the minimal force alleged to be reprehensible. See [*Pride v. Kansas Highway Patrol*, 793 F.Supp. 279, 282 \(D. Kan 1992\)](#). Thus, the Court concludes that Plaintiff's allegations of excessive force are insufficient to state a claim on which relief can be granted.

C. Entity Defendants

In addition to the individual defendants, Plaintiff's First Amended Complaint also seeks relief from Salt Lake City based on the theory that it failed to properly train and supervise its agents. Municipal entities cannot be held liable under § 1983 based on the doctrine of respondeat superior. See [Cannon v. City and County of Denver](#), 998 F.2d 867, 877 (10th Cir. 1993); see also [Monell v. Dep't of Soc. Servs. of N.Y.](#), 436 U.S. 658, 694, 98 S. Ct. 2018, 2051 (1978). To establish municipal liability, "a plaintiff must show (1) the existence of a municipal custom or policy and (2) a direct causal link between the custom or policy and the violation alleged." [Jenkins v. Wood](#), 81 F.3d 988, 993-94 (10th Cir. 1996) (citing *City of Canton v. Harris*, 489 U.S. 378, 385, 109 S. Ct. 1197, 1205 (1989)). In the absence of an explicit policy or an entrenched custom, "the inadequacy of police training may serve as a basis of § 1983 liability . . . where the failure to train amounts to a deliberate indifference to the rights of persons with whom the police come into contact." [Id.](#)

Plaintiff's First Amended Complaint does not allege specific facts linking Salt Lake City to a violation of Plaintiff's civil rights. Plaintiff has not pointed to any official policy or custom implemented by Salt Lake City which led to a constitutional violation. Nor has Plaintiff alleged facts

showing that the City failed to properly train its officers, much less that such a failure to train rose to the level of deliberate indifference. Thus, Plaintiff's allegations against Salt Lake City must be dismissed for failure to state a claim on which relief can be granted.

CONCLUSION

Based on the foregoing analysis the Court concludes that Plaintiff's claims stemming from the allegedly invalid search warrant are barred by collateral estoppel. In addition, Defendants are entitled to qualified immunity against Plaintiff's claims arising from the initial warrantless entry into his apartment. And, Plaintiff's remaining allegations must be dismissed for failure to state a claim on which relief can be granted.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Partial Summary Judgment is **denied**, and, Plaintiff's First Amended Complaint is **dismissed**.

DATED this 11th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell
United States District Judge